

§ 570.102

29 CFR Ch. V (7–1–10 Edition)

has delegated to the Wage and Hour Division the duty of making investigations to obtain compliance, and of developing standards for the issuance of regulations and orders relating to: (1) Hazardous occupations, (2) employment of 14- and 15-year-old children, and (3) age certificates.

(b) The interpretations of the Secretary contained in this subpart indicate the construction of the law which will guide him in performing his duties until he is directed otherwise by authoritative rulings of the courts or until he shall subsequently decide that his prior interpretation is incorrect.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

§ 570.102 General scope of statutory provisions.

The most important of the child labor provisions are contained in sections 12(a), 12(c), and 3(1) of the Act. Section 12(a) provides that no producer, manufacturer, or dealer shall ship or deliver for shipment in interstate or foreign commerce any goods produced in an establishment in or about which oppressive child labor was employed within 30 days before removal of the goods. The full text of this subsection is set forth in § 570.104 and its terms are discussed in §§ 570.105 to 570.111, inclusive. Section 12(c) prohibits any employer from employing oppressive child labor in interstate or foreign commerce or in the production of goods for such commerce. The text and discussion of this provision appear in §§ 570.112 and 570.113. Section 3(1) of the Act, which defines the term “oppressive child labor,” is set forth in § 570.117 and its provisions are discussed in §§ 570.118 to 570.121, inclusive. It will further be noted that the Act provides various specific exemptions from the foregoing provisions which are set forth and discussed in §§ 570.122 to 570.126, inclusive.

EFFECTIVE DATE NOTE: At 75 FR 28458, May 20, 2010, § 570.102 was revised, effective July 19, 2010. For the convenience of the user, the revised text is set forth as follows:

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§ 570.103 Comparison with wage and hour provisions.

A comparison of the child labor provisions with the so-called wage and hours provisions contained in the Act discloses some important distinctions which should be mentioned.

(a) The child labor provisions contain no requirements in regard to wages. The wage and hours provisions, on the other hand, provide for minimum rates of pay for straight time and overtime pay at a rate not less than one and one-half times the regular rate of pay for overtime hours worked. Except as provided in certain exemptions contained in the Act, these rates are required to be paid all employees subject to the wage and hours provisions, regardless of their age or sex. The fact therefore, that the employment of a particular child is prohibited by the child labor provisions or that certain shipments or deliveries may be proscribed on account of such employment, does not relieve the employer of the duties imposed by the wage and hours provisions to compensate the child in accordance with those requirements.

(b) There are important differences between the child labor provisions and the wage and hours provisions with respect to their general coverage. As pointed out in § 570.114, two separate and basically different coverage provisions are contained in section 12 relating to child labor. One of these provisions (section 12(c)), which applies to

the employment by an employer of oppressive child labor in commerce or in the production of goods for commerce, is similar to the wage and hours coverage provisions, which include employees engaged in commerce or in the production of goods for commerce or employed in enterprises having employees so engaged. The other provision (section 12(a)), however, differs fundamentally in its basic concepts of coverage from the wage and hours provisions, as will be explained in §§ 570.104 to 570.111.

(c) Another distinction is that the exemptions provided by the Act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only four specific child labor exemptions of which only one applies to the minimum wage and overtime pay requirements as well. This is the exemption for employees engaged in the delivery of newspapers to the consumer.³ With this exception, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the exclusion of certain employers by section 3(d)⁴ of the Act applies to the child labor provisions as well as the wage and hours provisions.

[16 FR 7008, July 20, 1951. Redesignated at 28 FR 1634, Feb. 21, 1963. Redesignated and amended at 36 FR 25156, Dec. 29, 1971]

EFFECTIVE DATE NOTE: At 75 FR 28458, May 20, 2010, § 570.103 was amended by revising paragraph (c), effective July 19, 2010. For the convenience of the user, the revised text is set forth as follows:

§ 570.103 Comparison with wage and hour provisions.

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³Section 13(d) of the Act.

⁴Section 13(d) defines “employer” to include “any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization”.

(c) Another distinction is that the exemptions provided by the Act from the minimum wage and/or overtime provisions are more numerous and differ from the exemptions granted from the child labor provisions. There are only eight specific child labor exemptions of which only two apply to the minimum wage and overtime pay requirements as well. These are the exemptions for employees engaged in the delivery of newspapers to the consumer and homeworkers engaged in the making of wreaths composed principally of evergreens.³ Apart from these two exceptions, none of the specific exemptions from the minimum wage and/or overtime pay requirements applies to the child labor provisions. However, it should be noted that the exclusion of certain employers by section 3(d)⁴ of the Act applies to the child labor provisions as well as the wage and hours provisions.

COVERAGE OF SECTION 12(a)

§ 570.104 General.

Section 12(a) of the Act provides as follows:

No producer, manufacturer, or dealer shall ship or deliver for shipment in commerce any goods produced in an establishment situated in the United States in or about which within 30 days prior to the removal of such goods therefrom any oppressive child labor has been employed: *Provided*, That any such shipment or delivery for shipment of such goods by a purchaser who acquired them in good faith in reliance on written assurance from the producer, manufacturer, or dealer that the goods were produced in compliance with the requirements of this section, and who acquired such goods for value without notice of any such violation, shall not be deemed prohibited by this subsection: *And provided further*, That a prosecution and conviction of a defendant for the shipment or delivery for shipment of any goods under the conditions herein prohibited shall be a bar to any further prosecution against the same defendant for shipments or deliveries for shipment of any such goods before the beginning of said prosecution.

³Both of these exemptions are contained in section 13(d) of the FLSA.

⁴Section 3(d) defines ‘employer’ as including “any person acting directly or indirectly in the interest of an employer in relation to an employee and includes a public agency, but does not include any labor organization (other than when acting as an employer) or anyone acting in the capacity of officer or agent of such labor organization.”